

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

JOAN CHARLES, \*  
Plaintiff, \*  
\*  
vs. \* CIVIL ACTION  
\* No. 04-11625RWZ  
OCWEN FEDERAL BANK, FSB; \*  
OCWEN FINANCIAL CORPORATION; \*  
MASSACHUSETTS PROPERTY \*  
INSURANCE UNDERWRITING \*  
ASSOCIATION; and \*  
ONE CALL INSURANCE AGENCY, \*  
INCORPORATED, \*  
Defendants. \*

ANSWER AND JURY CLAIM OF THE DEFENDANT, ONE CALL  
INSURANCE AGENCY, INCORPORATED, TO THE PLAINTIFF'S COMPLAINT

The defendant, One Call Insurance Agency, Incorporated, in the above-captioned matter, hereby makes this its answer to the plaintiff's complaint.

## FIRST DEFENSE

## INTRODUCTION

The defendant denies the allegations contained in the Introduction paragraph directed to One Call Insurance Agency, Incorporated.

## FACTS

1. The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 and calls upon the plaintiff

to prove the same.

2. The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 and calls upon the plaintiff to prove the same.

3. The defendant admits the allegations contained in paragraph 3.

4. The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 and calls upon the plaintiff to prove the same.

5. The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 and calls upon the plaintiff to prove the same.

4 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 and calls upon the plaintiff to prove the same.

5 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 and calls upon the plaintiff to prove the same. .

6 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 and calls upon the plaintiff to prove the same.

7 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 and calls upon the plaintiff to prove the same.

8 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 and calls upon the plaintiff to prove the same.

9 (sic). The defendant denies the allegations contained in paragraph 9.

10 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 and calls upon the plaintiff to prove the same.

11 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 and calls upon the plaintiff to prove the same.

12 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 and calls upon the plaintiff to prove the same.

13 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 and calls upon the plaintiff to prove the same.

14 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 and calls upon the plaintiff to prove the same.

13 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 and calls upon the plaintiff to prove the same.

14 (sic). The defendant denies the allegation that it provided "advice" to the plaintiff as stated and is presently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 14 and calls upon the plaintiff to prove the same.

15 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 and calls upon the plaintiff to prove the same.

16 (sic). The defendant is presently without knowledge or

information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 and calls upon the plaintiff to prove the same.

17 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 and calls upon the plaintiff to prove the same.

18 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 and calls upon the plaintiff to prove the same.

19 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 and calls upon the plaintiff to prove the same.

20 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 and calls upon the plaintiff to prove the same.

21 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 and calls upon the plaintiff to prove the same.

22 (sic). The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 and calls upon the plaintiff to prove the same.

WHEREFORE, the defendant demands that the plaintiff's complaint against it be dismissed and that judgment enter for the defendant, together with its costs.

**COUNT I**

Count I is not directed to this defendant and therefore does not require a response; however, in the event that this Count is read to be applicable to it, the defendant denies the allegations contained therein.

**COUNT II**

Count II is not directed to this defendant and therefore does not require a response; however, in the event that this Count is read to be applicable to it, the defendant denies the allegations contained therein.

**COUNT III**

Count III is not directed to this defendant and therefore does not require a response; however, in the event that this Count is read to be applicable to it, the defendant denies the allegations contained therein.

**COUNT IV**

Count IV is not directed to this defendant and therefore does not require a response; however, in the event that this Count is read to be applicable to it, the defendant denies the allegations contained therein.

**COUNT V**

Count V is not directed to this defendant and therefore does not require a response; however, in the event that this Count is read to be applicable to it, the defendant denies the allegations contained therein.

**COUNT VI**

42 (sic). The defendant incorporates herein by reference its answers to paragraphs 1 through 41 and makes them its answer to paragraph 42 of Count VI.

43 (sic). The defendant denies the allegations contained in paragraph 43 of Count VI.

44 (sic). The defendant denies the allegations contained in paragraph 44 of Count VI.

45 (sic). The defendant denies the allegations contained in paragraph 45 of Count VI.

WHEREFORE, the defendant demands that the plaintiff's complaint against it be dismissed and that judgment enter for the

defendant, together with its costs.

**COUNT VII**

Count VII is not directed to this defendant and therefore does not require a response; however, in the event that this Count is read to be applicable to it, the defendant denies the allegations contained therein.

**COUNT VIII**

Count VIII is not directed to this defendant and therefore does not require a response; however, in the event that this Count is read to be applicable to it, the defendant denies the allegations contained therein.

**COUNT IX**

55 (sic). The defendant incorporates herein by reference its answers to paragraphs 1 through 54 and makes them its answer to paragraph 55 of Count IX.

56 (sic). The defendant denies the allegations contained in paragraph 56 of Count IX.

57 (sic). The defendant denies the allegations contained in paragraph 57 of Count IX.

58 (sic). The defendant denies the allegations contained in paragraph 58 of Count IX.

WHEREFORE, the defendant demands that the plaintiff's complaint against it be dismissed and that judgment enter for the defendant, together with its costs.

**COUNT X**

Count X is not directed to this defendant and therefore does not require a response; however, in the event that this Count is read to be applicable to it, the defendant denies the allegations contained therein.

**COUNT XI**

Count XI is not directed to this defendant and therefore

does not require a response; however, in the event that this Count is read to be applicable to it, the defendant denies the allegations contained therein.

**COUNT XII**

Count XII is not directed to this defendant and therefore does not require a response; however, in the event that this Count is read to be applicable to it, the defendant denies the allegations contained therein.

**COUNT XIII**

Count XIII is not directed to this defendant and therefore does not require a response; however, in the event that this Count is read to be applicable to it, the defendant denies the allegations contained therein.

**COUNT XIV**

Count XIV is not directed to this defendant and therefore does not require a response; however, in the event that this Count is read to be applicable to it, the defendant denies the allegations contained therein.

SECOND DEFENSE

And further answering, the defendant says that the acts complained of were not committed by a person and/or entity for whose conduct the defendant was legally responsible.

THIRD DEFENSE

And further answering, the defendant says that if the plaintiff proves that the defendant was negligent as alleged, the plaintiff was negligent to a greater degree than the defendant and is barred from recovery under the Comparative Negligence Law of the Commonwealth of Massachusetts.

FOURTH DEFENSE

And further answering, the defendant says that the complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b) (5) for insufficient service of process.

FIFTH DEFENSE

And further answering, the defendant says that the complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b) (6) for failure to state a claim upon which relief can be granted.

SIXTH DEFENSE

And further answering, the defendant says that to the extent that it had any obligations to the plaintiff, such obligations have been fully, completely and properly performed in every respect.

SEVENTH DEFENSE

And further answering, the defendant says that, by her words and conduct, the plaintiff is estopped from recovery in this action.

EIGHTH DEFENSE

And further answering, the plaintiff is barred from recovery by her acceptance of the written policy without complaint or question prior to the alleged loss.

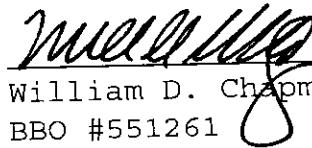
NINTH DEFENSE

And further answering, the plaintiff is barred from recovery against this defendant by virtue of her failure to perform conditions and obligations , under the policy of insurance.

JURY CLAIM

THE DEFENDANT, ONE CALL INSURANCE AGENCY, INCORPORATED, HEREBY MAKES CLAIM FOR A TRIAL BY JURY.

By its attorney,



William D. Chapman

BBO #551261

Kerry D. Florio

BBO #647489

MELICK, PORTER & SHEA, LLP

28 State Street

Boston, MA 02109-1775

(617) 523-6200

CERTIFICATE OF SERVICE

I, William D. Chapman, hereby certify that on this day, I forwarded notice of the foregoing document(s) by mailing a copy thereof, postage prepaid to the following:

James Hoyt  
PORTNOY AND GREENE, P.C.  
197 1<sup>st</sup> Avenue, Suite 130  
Needham, MA 02494

Michael Reilly  
Tommason & Tommasino  
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Boston, MA 02108

David Russman  
Michienzie & Sawin LLC  
101 Merrimac Street  
Boston, MA 02114



William D. Chapman

Date: 11-18-04